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10 Attorneys for Plaintiff

11 PETER DIXON

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 PETER DIXON individually,

)

15 Plaintiff,

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16 vs.

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17 CITY OF OAKLAND and the) **(REVISED) STIPULATED**
18 OAKLAND POLICE DEPARTMENT,) **PROTECTIVE ORDER**
19 public entities, SERGEANT BERNARD)
20 ORTIZ, OFFICER STEVEN TORIBIO,)
21 OFFICER PATRICK GERRANS,)
22 OFFICER ROBERT GERRANS,)
23 OFFICER R. GARCIA, PERSONAL)
24 PROTECTIVE SERVICES, INC., a)
25 California corporation, DEMONT)
26 MARROW and DOES 1 through 10,)
27 individually, jointly and severally,)
28 Defendants.

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)

1 The parties, by and through their respective attorneys of record, hereby stipulate to the
2 following protective order being issued in this matter:

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production of
5 confidential or private information for which special protection from public disclosure and from
6 use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the
7 parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.
8 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
9 responses to discovery and that the protection it affords extends only to the limited information or
10 items that are entitled under the applicable legal principles to treatment as confidential. The
11 parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
12 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth
13 the procedures that must be followed and reflects the standards that will be applied when a party
14 seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and outside counsel (and their support staff).

18 2.2 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner generated, stored or maintained (including, among other things, testimony,
20 transcripts, or tangible things) that are produced or generated in disclosures or responses to
21 discovery by any Party in this matter.

22 2.3 “Confidential” Information or Items: information (regardless of how generated,
23 stored or maintained) or tangible things that qualify for protection under standards developed
24 under Federal Rule of Civil Procedure 26(c). This material includes, but is not limited to,
25 Plaintiff's medical and Plaintiff's psychotherapeutic records, as well as officer personnel records

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1 and other similar confidential records designated as such.

2 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
5 Material in this action.

6 2.6 Designating Party: a Party or non-party that designates information or items that it
7 produces in disclosures or in responses to discovery as “Confidential.”

8 2.7 Protected Material: any Disclosure or Discovery Material that is designated as
9 “Confidential.”

10 2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained
11 to represent or advise a Party in this action.

12 2.9 House Counsel: attorneys who are employees of a Party.

13 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
14 support staffs).

15 2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to
16 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
17 consultant in this action and who is not a past or a current employee of a Party or of a competitor
18 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party
19 or a competitor of a Party’s.

20 2.12 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
22 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected Material

1 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
2 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
3 parties or counsel to or in court or in other settings that might reveal Protected Material.

4. **DURATION**

5 Even after the termination of this litigation, the confidentiality obligations imposed by this
6 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
7 otherwise directs.

5. **DESIGNATING PROTECTED MATERIAL**

10 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each Party
11 or non-party that designates information or items for protection under this Order must take care to
12 limit any such designation to specific material that qualifies under the appropriate standards. A
13 Designating Party must take care to designate for protection only those parts of material,
14 documents, items, or oral or written communications that qualify – so that other portions of the
15 material, documents, items or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routine designations are prohibited. Designations that are shown
18 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
19 encumber or retard the case development process, or to impose unnecessary expenses and burdens
20 on other parties), expose the Designating Party to sanctions.

21 If it comes to a Party's or a non-party's attention that information or items that it
22 designated for protection do not qualify for protection at all, that Party or non-party must promptly
23 notify all other parties that it is withdrawing the mistaken designation.

24 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this Order
25 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
26 material that qualifies for protection under this Order must be clearly so designated before the
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1 material is disclosed or produced. Designation in conformity with this Order requires:

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the designation “CONFIDENTIAL” at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify that the material is “CONFIDENTIAL.”

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21 (b) for testimony given in deposition or in other pretrial or trial proceedings,
22 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
23 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
24 any portions of the testimony that qualify as "CONFIDENTIAL." When it is impractical to
25 identify separately each portion of testimony that is entitled to protection, and when it appears that
26 substantial portions of the testimony may qualify for protection, the Party or non-party that
sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
proceeding is concluded) a right to have up to twenty (20) days to identify the specific portions of

1 the testimony as “CONFIDENTIAL.” Only those portions of the testimony that are appropriately
 2 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
 3 Protective Order.

4 Transcript pages containing Protected Material must be separately bound by the
 5 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” as
 6 instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

7 (c) for information produced in some form other than documentary, and for any
 8 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 9 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
 10 If only portions of the information or item warrant protection, the Producing Party, to the extent
 11 practicable, shall identify the protected portions, specifying the material as “CONFIDENTIAL.”

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 13 designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive
 14 the Designating Party’s right to secure protection under this Order for such material. If material is
 15 appropriately designated as “CONFIDENTIAL” after the material was initially produced, the
 16 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
 17 that the material is treated in accordance with this Order.

18 5.4 Privilege Logs. If a party withholds information that is responsive to a discovery
 19 request by claiming that it is privileged or otherwise protected from discovery, that party shall
 20 ***promptly*** prepare and provide a privilege log that is sufficiently detailed and informative for the
 21 opposing party to assess whether a document’s designation as privileged is justified. *See*
 22 Fed.R.Civ.P. 26(b)(5). The privilege log shall set forth the privilege relied upon and specify
 23 separately for each document or for each category of similarly situated documents:

24 (a) the title and description of the document, including number of pages or Bates-
 25 number range;

- (b) the subject matter addressed in the document;
- (c) the identity and position of its author(s);
- (d) the identity and position of all addressees and recipients;
- (e) the date the document was prepared and, if different, the date(s) on which it was sent to or shared with persons other than its author(s); and
- (f) the specific basis for the claim that the document is privileged and protected.

Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Failure to furnish this information promptly may be deemed a waiver of the privilege of protection.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly either in person or by telephone, and may not meet and confer by letter, e-mail or fax, with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

1 6.3 Judicial Intervention. If disagreements remain regarding a designation, the parties
2 shall file a joint letter no later than five business days after the meet and confer session, unless
3 otherwise directed by the court. **Lead trial counsel for both parties must sign the letter**, which
4 shall include an attestation that the parties met and conferred in person or by telephone regarding
5 all issues prior to filing the letter. Going issue-by-issue, the joint letter shall describe each
6 unresolved issue, summarize each party's position with appropriate legal authority; and provide
7 each party's final proposed compromise before moving to the next issue. The joint letter shall not
8 exceed ten pages without leave of court. **Parties are expected to plan for and cooperate in**
9 **preparing the joint letter so that each side has adequate time to address the arguments**. In
10 the rare instance that a joint letter is not possible, each side may submit a letter not to exceed four
11 pages, which shall include an explanation of why a joint letter was not possible. The parties shall
12 submit one exhibit to the letter that only sets forth each disputed designation in full, followed
13 immediately by the objections and/or responses thereto. No other information shall be included in
14 any such exhibit. No other exhibits shall be submitted without prior approval by the court. The
15 court will review the submission(s) and determine whether formal briefing or proceedings are
16 necessary. **Discovery letter briefs must be e-filed under the Civil Events category of Motions**
17 **and Related Filings > Motions - Genera > "Discovery Letter Brief"**.

18 In the event that a hearing is ordered, the court expects counsel to appear in person.
19 Permission for a party to attend by telephone may be granted, in the court's discretion, upon
20 written request made at least one week in advance of the hearing if the court determines that good
21 cause exists to excuse personal attendance, and that personal attendance is not needed in order to
22 have an effective discovery hearing. The facts establishing good cause must be set forth in the
23 request.

24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Until the court rules on the challenge, all parties shall continue to treat the material in
26 question as "CONFIDENTIAL."

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1 In emergencies during discovery events (such as depositions), any party may, after
2 exhausting good faith attempts to resolve disputed issues, seek judicial intervention pursuant to
3 Civil L.R. 37-1(b) by contacting the court through the courtroom deputy. If the court is
4 unavailable, the discovery event shall proceed with objections noted for the record.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a non-party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
9 the categories of persons and under the conditions described in this Order. When the litigation has
10 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and in
13 a secure manner that ensures that access is limited to the persons authorized under this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
15 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated CONFIDENTIAL only to:

17 (a) the Receiving Party’s counsel of record in this action, as well as employees
18 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

19 (b) the officers, directors, and employees (including House Counsel) of the
20 Receiving Party to whom disclosure is reasonably necessary for this litigation;

21 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure
22 is reasonably necessary for this litigation;

23 (d) the Court and its personnel;

24 (e) court reporters, their staffs, and professional vendors to whom disclosure is

1 reasonably necessary for this litigation;

2 (f) during their depositions, witnesses in the action to whom disclosure is
3 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
4 reveal Protected Material must be separately bound by the court reporter and may not be disclosed
5 to anyone except as permitted under this Stipulated Protective Order.

6 (g) the author of the document or the original source of the information.

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8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
LITIGATION

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10 If a Receiving Party is served with a subpoena or an order issued in other litigation that
11 would compel disclosure of any information or items designated in this action as
12 "CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by fax
13 and/or e-mail) immediately and in no event more than three court days after receiving the
14 subpoena or order. Such notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who caused the
16 subpoena or order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
18 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
19 caused the subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the existence of
21 this Protective Order and to afford the Designating Party in this case an opportunity to try to
22 protect its confidentiality interests in the court from which the subpoena or order issued. The
23 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
24 confidential material – and nothing in these provisions should be construed as authorizing or
25 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
2 LITIGATION

3 The terms of this Order are applicable to information produced by a Non-Party in this
4 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
5 connection with this litigation is protected by the remedies and relief provided by this Order.
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7 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
8 additional protections.

9 In the event that a Party is required, by a valid discovery request, to produce a Non-Party's
10 confidential information in its possession, and the Party is subject to an agreement with the Non-
11 Party not to produce the Non-Party's confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-Party
14 that some or all of the information requested is subject to a confidentiality agreement with
15 a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
18 specific description of the information requested; and

19 (3) make the information requested available for inspection by the Non-
20 Party.

21 If the Non-Party fails to object or seek a protective order from this court within 14 days of
22 receiving the notice and accompanying information, the Receiving Party may produce the Non-
23 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks
24 a protective order, the Receiving Party shall not produce any information in its possession or
25 control that is subject to the confidentiality agreement with the Non-Party before a determination
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1 by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
6 Material to any person or in any circumstance not authorized under this Stipulated Protective
7 Order, the Receiving Party must immediately: (a) notify in writing the Designating Party of the
8 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
9 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
10 Order, and (d) request such person or persons to be bound by the Stipulated Protective Order.

11 11. **FILING PROTECTED MATERIAL**

12 Without written permission from the Designating Party or a court order secured after
13 appropriate notice to all interested persons, a Party may not file in the public record in this action
14 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
15 with Civil Local Rule 79-5.

16 12. **FINAL DISPOSITION**

17 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
18 days after the final termination of this action, defined as the dismissal or entry of judgment by the
19 district court, or if an appeal is filed, the disposition of the appeal, each Receiving Party must
20 return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
21 Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing
22 or capturing any of the Protected Material. With permission in writing from the Designating
23 Party, the Receiving Party may destroy some or all of the Protected Material instead of returning
24 it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a

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26 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
27 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 written certification to the Producing Party (and, if not the same person or entity, to the
2 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the
3 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not
4 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing
5 any of the Protected material. Notwithstanding this provision, Counsel are entitled to retain an
6 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
7 attorney work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective Order as set
9 forth in Section 4 (DURATION), above.

10 13. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
12 seek its modification by the Court in the future.

13 12.2 Chambers Copies and Proposed Orders. Pursuant to Civil L.R. 5-1(e)(7) and 5-
14 2(b), parties must lodge an extra paper copy of certain filings and mark it as a copy for
15 "Chambers." Please three-hole punch the chambers copy and submit it to the Oakland Clerk's
16 Office.

17 Any Stipulation or proposed order submitted by an e-filing party shall be submitted by
18 email to dmrpo@cand.uscourts.gov as a word processing attachment on the same day the
19 document is e-filed. This address should only be used for this stated purpose unless otherwise
20 directed by the court.

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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence any of the material covered by
5 this Protective Order.

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7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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9 Dated:

HADDAD & SHERWIN

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/s/ Michael J. Haddad*

MICHAEL J. HADDAD

Attorneys for Plaintiff PETER DIXON

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Dated:

OAKLAND CITY ATTORNEY'S OFFICE

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/s/ Arlene Rosen*

ARLENE ROSEN

Attorneys for Defendants CITY OF OAKLAND, R. GERRANS, P. GERRANS, R. GARCIA, B. ORTIZ and S. TORIBIO

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Dated:

BREMER WHYTE BROWN & O'MEARA LLP

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/s/ Lance Pedersen*

LANCE PEDERSEN

Attorneys for Defendants PERSONAL PROTECTIVE SERVICES, INC. and DEMONT MARROW

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*Mr. Haddad, Ms. Rosen and Mr. Pedersen provided their consent that this document be electronically filed.

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED
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3 Dated: Oct '37.'4235



4 HONORABLE DONNA M. RYU
5 United States Magistrate Judge
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